UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1996/AC.4/5/Add.4
28 June 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Working Group on Indigenous Populations
Fourteenth session
29 July-2 August 1996
Item 8 of the provisional agenda

CONSIDERATION OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE

Information received from indigenous peoples' organizations

Addendum

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

[Original: ENGLISH]
[11 June 1996]

PROPOSAL FOR A PERMANENT FORUM FOR INDIGENOUS PEOPLES AT THE UNITED NATIONS

1. The Aboriginal and Torres Strait Islander Commission (ATSIC), an indigenous organization in consultative status with the Economic and Social Council strongly supports the establishment within the United Nations system, of a permanent forum for indigenous peoples, prior to the end of the Decade of the World's Indigenous People in 2004.

2. ATSIC notes calls to establish such a forum:

At article 22, and chapter 6 of Agenda 21 of the Rio Declaration on Environment and Development (June 1992);

At article 11:31 of the Vienna Declaration and Programme of Action (June 1993);

By the General Assembly in its resolution 48/163 of December 1993; and

During extensive discussions at the Copenhagen Workshop on a Permanent Forum for Indigenous People (June 1995).

3. ATSIC supports continuance of the Working Group on Indigenous Populations and the enhancement of its undoubted worth as an adviser to other paramount organizations and institutions within the United Nations. Despite reference in the Vienna Declaration and Programme of Action, to renewal and updating of the mandate of the Working Group, ATSIC does not believe that there is anything within its original terms of reference to suggest that the Working Group's role is only temporary or provisional. No part of the resolution of the Economic and Social Council establishing the Working Group sets a time limit to its existence.

4. It has been suggested that the Working Group be expanded to include economic, social and cultural rights, as well as developmental issues, as an alternative to the establishment of a permanent forum. ATSIC does not support this proposal.

5. Such a proposal would not enhance the role or representation of indigenous peoples, nor would it satisfy their aspirations for more effective, open and responsible participation and recognition within the United Nations system, to the extent intimated by General Assembly resolution 48/163.

Concurrent existence of the Working Group on Indigenous Populations and the permanent forum

6. There is nothing incompatible in the concurrent existence of both bodies. Each would enhance and augment the activity of the other, provided that there is clear delineation of the roles of each institution, no overlapping areas of jurisdiction and no duplication of the other's work.

7. The proposed permanent forum should have a strong operational focus and provide a framework for concerted implementation of indigenous rights. It would concentrate preferably on developmental questions and the coordination of indigenous issues at the United Nations, including environment, health, education and culture. Like the Working Group, it should aim at the inclusion of indigenous peoples and experts in its functional and coordination activity. It should also strive for a cordial, cooperative, consultative and constructive relationship with the Working Group.

The role of the Working Group and its relationship with the permanent forum

8. The Working Group should continue to focus on its two main roles of:

Reviewing national developments relating to promotion and protection of the human rights and fundamental freedoms of indigenous peoples; and

Overseeing the evolution of international standards concerning the rights of indigenous peoples, taking into account the similarities and differences in indigenous peoples' situations and aspirations throughout the world.

9. The Working Group on Indigenous Populations was the first forum established by the United Nations specifically for indigenous peoples. In addition to its role in preparing the draft declaration on the rights of indigenous peoples, its facilitation of constructive communications between States and their indigenous peoples and other recognized activities, such as supporting the Voluntary Fund, initiating meetings, discussions and seminars, and overseeing the International Year and Decade of the World's Indigenous People, it should continue as a deliberative body which can be a resource for other agencies within the United Nations system, and draft new legal instruments, including a possible convention on the rights of indigenous peoples.

Continued indigenous participation

10. Maintenance of the Working Group, with its distinctively less formal accreditation requirements, its greater practice of equality amongst parties, whether governmental or indigenous, and its readiness to hear indigenous groups without consultative status, will encourage continued representation and input from a greater cross-section of the world's indigenous peoples. Maintenance of this accessible and open expert forum will enable indigenous peoples collectively to raise issues of concern to themselves and to promote their fundamental rights through international action.

11. Both types of institution are necessary, if the United Nations is to be seen by indigenous peoples as being more accessible to their collective interests, more responsive to their needs, and is to be regarded as the appropriate focal point for their aspirations and the guarantor of their basic human rights and fundamental freedoms.

The permanent forum

12. A permanent forum, in keeping with its preferred higher institutional status within the United Nations system, would maintain more formal structures, procedures, modes of representation, investigation and presentation. In addition to providing a permanent space for indigenous peoples at the United Nations, if the forum is given sufficient status within the world body it will be able to develop and progress policy at the international level to benefit indigenous peoples.

Its mandate and scope of powers

13. A relatively unique factor in the human rights sphere is that while many of the rights of indigenous peoples stated in their draft declaration include individual human rights, they also include collective or group rights, as well as rights which extend beyond the sectoral framework of human rights.

14. The Working Group on Indigenous Populations does not have significant legal and institutional status within the United Nations. Its powers are not

directed to targets outside the United Nations and, as it has no mandate to accept petitions or receive complaints, its review processes are essentially passive. Its members have no powers of substantive recommendation or action. Ideally the permanent forum should therefore:

Be capable of taking decisions and making recommendations;

Be given high-level status within the United Nations system;

Have access to all levels of the United Nations where matters of concern to indigenous peoples may be discussed;

Have full and equitable indigenous representation;

Be fully resourced to carry out its functions.

15. Ideally it should also have powers, in the absence of an indigenous peoples convention, to monitor human rights situations, hear grievances and recommend action to the major United Nations treaty bodies. The last two are of particular concern to indigenous peoples, in those areas which cannot be dealt with directly by the Working Group.

16. The permanent forum should also be empowered to:

Set its own agenda;

Determine definitional issues in consultation with indigenous peoples;

Establish working groups;

Appoint rapporteurs;

Hold expert meetings;

Provide technical and expert advice;

Develop studies; and

Suggest action for the High Commissioner for Human Rights or indeed lobby for a high commissioner for indigenous peoples.

Position within the United Nations system and reporting requirements

17. As the preferred scope for the permanent forum would extend to developmental questions, including environment, health, education and culture, and as its proceedings would result in substantive conclusions or recommendations for action, the issue arises as to which authority within the United Nations system the forum should report.

(a) First preferred option

18. Several structural options have been proposed. One which has indigenous support in Australia is, that considering the range of indigenous rights issues, and the variety of conditions in which indigenous peoples find themselves throughout the world, the permanent forum should be a commission, additional to the Commission on Human Rights and the Commission on Sustainable Development, and should report directly to the Economic and Social Council. Were the forum instituted as a functional commission of the Economic and Social Council, this would acknowledge:

The holistic nature of many indigenous cultural concerns;

That indigenous issues extend beyond the sectoral framework of human rights;

That the distinct amalgam of communitarian, cultural, human and developmental rights affirmed by the world's "first peoples" are sufficiently unique as to constitute an annex to, or an extension of the rights declared in the Universal Declaration of Human Rights, rather than be regarded as an elaboration either of minority rights or of rights under existing conventions; and

That the unique complex of rights, and the special character and claims of a segment of humanity hitherto ignored by paramount institutions, require an institution with a distinct focus and status within the world body.

19. Recent United Nations interest in indigenous peoples, as evidenced by ILO Convention No. 169, the attempt to establish a core indigenous advisory group in the World Health Organization and the general review of functions of other agencies as they relate to indigenous peoples, indicate a perception that the needs of a much neglected portion of the human family have been ignored for too long. Their interests now require higher level recognition, coordination, reporting and accountability, rather than being left as an adjunct to committees and commissions which have other matters more central to their mandates.

(b) Second preferred option

20. At present the Working Group on Indigenous Populations operates under the aegis of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. If the proposal for commission status is not yet viable, the permanent forum should at least have equal status with a sub-commission of the Commission on Human Rights, and report to it directly. The suggestion that the Forum might report both to the Commission on Human Rights and the Commission on Sustainable Development could provide a ready-made formula for bureaucratic sidestepping. This option however might fail to establish the correct focus and fail to accommodate sufficiently all major components of indigenous rights - the developmental questions, environment, health, education, culture, land rights and claims for recognition of indigenous intellectual property rights.

A United Nations Commission on the rights of indigenous peoples

21. While costs and initial workloads might not immediately recommend the establishment of a commission on the rights of indigenous peoples with the same numbers as the Commission on Human Rights or the Commission on Sustainable Development, there is nothing in principle to prevent the General Assembly initially authorizing the creation of a commission, or indeed a sub-commission on the rights of indigenous peoples, with a lesser establishment, despite the observation that "it might not be useful to make comparison with such bodies since no binding instrument on indigenous rights exists" (E/CN.4/Sub.2/AC.4/1994/11). Size is a matter determined by the General Assembly, or agreed to by treaty, and the Economic and Social Council is also empowered by article 68 of the Charter of the United Nations to establish such bodies.

22. Other options, such as a permanent forum existing solely as an advisory body to the Secretary-General or the High Commissioner for Human Rights, would not fulfil the world's obligations to indigenous peoples, nor satisfy their aspirations, or the spirit of the General Assembly resolution.

Membership

23. The commission on the rights of indigenous peoples could consist of equal numbers of government representatives, indigenous representatives and independent experts. Similarly if the sub-commission option were adopted, it could consist of five State parties, five indigenous representatives - one from each of the world's five regions - and five independent experts. The selection process for indigenous representatives for either body would need to be considered carefully and various arrangements examined. One option might be that a pool of candidates could be nominated by the Working Group on Indigenous Populations or by indigenous peoples' organizations.

24. In any option chosen, a basic principle should be observed that if Member States are to be part of the forum they should choose their representatives, wherever possible, from representative indigenous officials within their own State administrations.

25. The appointment of a high commissioner for indigenous peoples and of indigenous rapporteurs to conduct investigations is recommended.

Funding

26. Funding will always be a problem. Some suggestions are that funding could derive from:

The customary section of the United Nations budget;

National contributions;

Indigenous group contributions;

Royalty agreements or voluntary international levies on that portion of the income of State parties derived from exploitation of resources in territories traditionally occupied by indigenous peoples; or

Similar levies on industrialized States which manufacture or use materials obtained from such sources.

Physical location of the permanent forum

27. In consideration of the active and welcoming support of the Government of Denmark for indigenous rights, and its support for the Greenland Home Rule Government, Copenhagen might be considered as a suitable location for the headquarters of the permanent forum.

28. The forum should also be authorized to hold meetings, from time to time, at capitals in other major world regions, such as Bangkok, San Diego or Nairobi and at United Nations Headquarters in New York and the United Nations Office in Geneva.